IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Uttam Prakash Vaidya Versus Nawal Singh & Anr.

S.B. Criminal Misc. Petition No. 1025/2005
against the order dated 25-6-2005 passed
by the Additiona Chief Judicial Magistrate,
Mount Abu, in Criminal Case No. 73/2005.

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Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Siddarth Joshi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the non-petitioner No.1 though served.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 25-6-2005 passed by the Additional Chief Judicial Magistrate, Mount Abu (for short, "the trial Court" hereinafter) in Criminal Case No. 73/2005, whereby the trial Court took cognizance of the offence under Section 189 IPC and issued process against the petitioner.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. No one appears for the non-petitioner No.1 though served. Carefully perused the order

impugned.

It is contended by the learned counsel for the petitioner that the complainant, who is a Forest Guard, is not empowered to enter in the premises of the petitioner, i.e. Hotel Suruchi run by the petitioner and therefore, there being no question of forbear or delay to do any act by a public servant connected with public function and as such the very essential ingredients for the offence under Section 189 IPC are not made out. Learned counsel has invited my attention to rule 23 of the Reserved Forests Rules, 1957 , wherein it has been provided that any forest officer not below the rank of a Forest Guard may check the forest produce during transit. There is no provision enabling a Forest Guard to enter into the premises, i.e. the hotel of the petitioner and make any search without there being a search warrant and, therefore, the act of the complainant obviously is unauthorized in entering into the premises, i.e. the hotel of the petitioner and the petitioner had every right to protect his possession from such unauthorized entry. Learned counsel further submits that Section 72 of the Rajasthan Forest Act, 1953 provides that the State Government may invest any Forest Officer with all or any of the following powers, that is to say (a) power to enter upon any land and to survey, demarcate and make a map of the same; (b) the powers of a Civil Court to compel the attendance of witnesses and the production of

documents and material objects; and (c) power to hold an inquiry into forest offence.

In the instant case, without there being any authorization by the State Government, the complainant alleged to have entered in the hotel premises of the petitioner, which, according to the complainant, was forbidden to search the hotel premises by the petitioner and, therefore, even if he was restrained to search the hotel premises by the petitioner, it cannot be said that the offence under Section 189 IPC is made out against the petitioner.

On careful perusal of the material on record, in my view, there is no ground, on the basis of which it can be said that the complainant, being a public servant, was forbidden or restrained to act while discharging the public duty. In the circumstances, therefore, the order impugned of the trial Court taking cognizance of the offence against the petitioner cannot be sustained and is liable to be set aside.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated 25-6-2005 passed by the trial Court in Criminal Case No. 73/2005 is set-aside and the proceedings against the petitioner stand quashed.

(H.R. PANWAR), J.

mcs